

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

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STATE OF OHIO, :

Plaintiff. :

vs. :Case Number B1003262

RUBEN JORDAN, :Appeal Number C1100833

Defendant. :Volume X of X

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TRANSCRIPT OF PROCEEDINGS

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APPEARANCES:

Seth S. Tieger, Esq.

Megan E. Shanahan, Esq.

On behalf of the State of Ohio.

Michele Berry, Jr., Esq.

On behalf of the Defendant.

BE IT REMEMBERED that upon the hearing  
of this cause, on October 7, 2011, before the  
Honorable NADINE L. ALLEN, a judge of the said  
court, the following proceedings were had, to  
wit:

1 MORNING SESSION, October 7, 2011

2 THE COURT: This is the matter of  
3 State vs. Ruben Jordan on B1003262. This  
4 is the Court's decision. This matter is  
5 before the Court on the defendant's  
6 February 27, 2011 Motion for New Trial.

7 Based upon the evidence submitted,  
8 this Court finds that the motion is not  
9 well taken and is denied.

10 The primary argument presented by  
11 defendant is that the playing of the tape  
12 with a witness' prior inconsistent  
13 statement to the jury was a violation of  
14 Ohio Rules of Evidence 613(B), even  
15 though the tape was not admitted into  
16 evidence as an exhibit.

17 On this point, the Ohio Supreme  
18 Court has ruled that when a case of a  
19 witness' prior inconsistent statement is  
20 played for the jury, but not admitted  
21 into evidence, there is no error by this  
22 Court.

23 That's State v. Keith, 79 Ohio  
24 St.3d 526, and it's cited in this  
25 decision.

1           In another upheld appellate  
2           decision the Court ruled that even when  
3           the prior inconsistent statement was  
4           erroneously admitted into evidence, in  
5           violation of Ohio Rules of Evidence  
6           613(B), that error was harmless.

7           State v. Hill, 2004-Ohio-2948 2nd  
8           District. A witness' prior inconsistent  
9           statement may be used for impeachment  
10          purposes even when the witness admits the  
11          statement. State v. Johnson, 1983 case,  
12          10 Ohio App. 3d 14.

13          And in contrast, in State v.  
14          Carusone, 2003-Ohio-1018, that's a 1st  
15          Appellate District decision. The Court  
16          ruled prior inconsistent statements may  
17          only be used as extrinsic evidence when  
18          the proper foundation is laid under Ohio  
19          Rules of Evidence 613(B). However the  
20          Carusone ruling was extrinsically based  
21          on other factors. And the statement in  
22          that case included other bad acts that  
23          the prosecutor incited the jury to  
24          consider the statement purely as proof of  
25          the defendant's guilt and that the Judge

1           did not give the jury a curative  
2           instruction.

3           The defendant also argued that the  
4           prosecutor remarked in closing argument  
5           inviting the jury to consider the taped  
6           statement as substantive evidence were  
7           overly prejudicial.

8           In this case the prosecutor also  
9           told the jury that the same statement  
10          should be used for impeachment purposes  
11          only. Additionally, this Court gave a  
12          curative instruction that the statement  
13          shall only be considered for impeachment  
14          purposes following the Keith case.

15          The defendant claims that the  
16          motion should be granted because  
17          compelling new evidence of the  
18          defendant's innocence has emerged based  
19          upon the confession of Kareem Gilbert.

20          The transcript of the proceedings  
21          in the case of Kareem Gilbert does not  
22          reveal a confession since the exculpatory  
23          statements were made by Defendant  
24          Gilbert's attorney in mitigation;  
25          therefore, the motion is denied as it

1 fails to meet the Petro standard. In  
2 State vs. Petro, 76 N.E.2d 370 it is so  
3 ordered.

4 Counsel, I'm going to prepare a  
5 written document for you and send it in  
6 the mail. Thank you.

7 who's on the case today?

8 MR. TIEGER: Seth Tieger.

9 MS. SHANAHAN: And Megan Shanahan.

10 THE COURT: And for the defendant?

11 MS. BERRY: Michele Berry.

12 THE COURT: Thank you for your  
13 presence. There is also an appeal going  
14 on, is there not?

15 MS. BERRY: There will be now.

16 THE COURT: And all these matters  
17 will be assumed that it will be appealed  
18 and you're going to handle the appeal?

19 MS. BERRY: Yes. Now that this  
20 decision has come down it will be  
21 appealed.

22 (Proceeding concluded.)  
23  
24  
25

## 1 CERTIFICATE

2 I, SHERI D. RENKEN, RMR, the  
3 undersigned, an Official Court Reporter for the  
4 Hamilton County Court of Common Pleas, do hereby  
5 certify that I transcribed Pat Nash's notes, and  
6 that the transcribed within five pages is a  
7 true, complete, and accurate transcript of her  
8 said stenotype notes.

9 IN WITNESS WHEREOF, I hereunto set my  
10 hand this 26th day of January, 2012.

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14 SHERI D. RENKEN, RMR  
15 Official Court Reporter  
16 Court of Common Pleas  
17 Hamilton County, Ohio  
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